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Practitioner's Docket No. 99CR107/KE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: George W. Palmer
Application No.: 09/391,781
Filed: 09/08/1999
For: Method And Apparatus For Selecting,
Controlling And Displaying Parameters For
An Avionics Radio Tuning Unit

Group No.: 2173
Examiner: T. Hailu

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(PATENT APPLICATION--37 C.F.R. § 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on August 5, 2003.
2. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

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Sheila K. Mathews
Signature

Date: October 3, 2003

Sheila K. Mathews

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* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

other than a small entity \$330.00

Appeal Brief fee due \$330.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

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Appeal brief fee \$330.00
Extension fee (if any) \$0.00

TOTAL FEE DUE \$330.00

6. FEE PAYMENT

Authorization is hereby made to charge the amount of \$330.00 to Deposit Account No. 18-1722.

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7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 18-1722.

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1 of 3

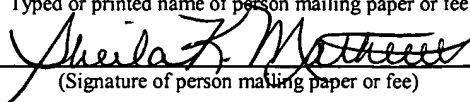
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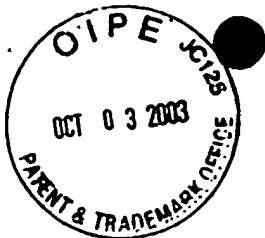


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In re Application of: George W. Palmer,
Claude Eyssautier,
and Matt Smith

Serial No: 09/391,781

Filed: September 8, 1999

Group Art Unit: 2173

For: Method and Apparatus for Selecting,
Controlling and Displaying Parameters for
An Avionics Radio Tuning Unit

Examiner: T. Hailu
(703) 306-2799

Attorney Docket: 99CR107/KE

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Assistant Commissioner for Patents
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APPLICANT'S BRIEF ON APPEAL TO THE BOARD

This is an appeal from the final rejection of the Examiner dated April 9, 2003, rejecting all of the claims in the case. This Brief is accompanied by the requisite fee set forth in §1.17(c).

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee, Rockwell Collins Inc.

RELATED APPEALS AND INTERFERENCES

The application on appeal is not subject to, or an element in, any other appeal or interference proceeding within the U.S. Patent and Trademark Office.

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STATUS OF CLAIMS

Claims 1-4, 6-12, 14, 17, 18, 21, and 22 are pending, have been finally rejected, and are all on appeal.

STATUS OF AMENDMENTS

No amendments have been requested to be entered since the most recent Final Rejection of April 9, 2003.

SUMMARY OF THE INVENTION

Now referring to Figures 4 and 7, and generally to pages 9-10 of the specification, and generally speaking, and without prejudice to the scope of the claims, the invention in the apparatus claims on appeal relates to an avionics system (identified at reference number 700 in Figure 7, page 10 lines 12-13 in the specification) that has an avionics radio receiver (704, p. 10 line 14) coupled thereto. A display (702, p. 10 line 13) is coupled to the avionics receiver. An avionics operational system (710, p. 10 lines 16-20) is coupled to the display for providing information relating to operation of an aircraft to a pilot. The display has a graphical user interface (p. 11 lines 1-13, Figures 1-6) for generating commands to manipulate said avionics radio receiver in response to a signal generated in response to a positional characteristic of a cursor displayed on the display. The graphical user interface returns a display shown on the display to a pre-existing display, without user input, upon a passage of time (page 9 line 22-page 10 line 2).

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ISSUES

The issue on appeal is as follows: Whether the subject matter of claims 1-4, 6-12, 14, 17, 18, and 21-22 is unpatentable under 35 U.S.C. §102 (e) as being anticipated by the Briffe et al. (6,112,141) reference.

GROUPING OF CLAIMS

Group A includes claims 1-4, 6-12, 14, 17-18 and 21-22.

ARGUMENTS FOR REVERSAL OF THE ANTICIPATION REJECTION

A. Introduction

The Group A claims were all rejected as being anticipated by Briffe. Independent claims 1, 9 and 21 contain the following limitation:

wherein said graphical user interface returns a display shown on said display to **a pre-existing display, without user input, upon a passage of time.**

Independent claim 14, from which claims 17-18 depend, contains the following similar limitation:

wherein said means for graphically coupling **returns a pre-existing view to said means for displaying upon a passage of time and without user input...**

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The remaining claims on appeal depend directly or indirectly from one of these four independent claims. The Examiner's repeated rejections of the claims at issue in this appeal, however, center on the limitations highlighted above.

The Examiner stated, in the April 9, 2003 Final Rejection, that Briffe provides "automatically displaying status and operational procedures when any failure occurs, but the pilot can also access the status and operational procedures in normal operation (see col 22, lines 11-26; see also col 9, lines 48-64; also see col 15 lines 40-49)." The Examiner asserted that because applicants used the open-ended term "comprising" in the preamble of each of the claims, the "teaching of Briffe is considered equivalent to the claimed limitation" (page 3 of the Final Rejection).

The Examiner is in error for the following reasons: (1) Briffe does not include all limitations found in applicants' independent claims; and (2) Equivalence cannot be introduced into an anticipation rejection under 35 U.S.C. §102 based upon the transitional phrase used in a claim. Applicants believe either of these reasons is sufficient grounds to reverse the anticipation rejection currently entered against the pending claims. Each reason will now be discussed in further detail.

B. Briffe does not include all limitations of applicants' independent claims 1, 9, 14 and 21, and therefore does not anticipate applicants' claimed invention under 35 U.S.C. §102.

Referring to the relevant portions of Briffe, Briffe discloses a graphically oriented aircraft display and control apparatus. In column 22 a check list management system is disclosed that provides "access to the multitude of status and operational procedures that must be managed to provide safe and efficient operation of the aircraft (lines 13-15). The check lists are grouped into chapters, which include normal, abnormal, user, and emergency. The 'normal', 'abnormal', and 'user' chapters are displayed upon request (lines 19-24), while the 'emergency' chapter is automatically displayed when

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any failure occurs. (lines 24-25). Column 9 lines 48-64 discloses the automatic display of the Traffic Collision Avoidance System (TCAS) either automatically in case of a traffic alert or by pressing a button. Column 15 lines 40-49 also discuss the automatic or manually-initiated display of TCAS information. Briffe also discloses the use of a manual switch 38 to return to a previously displayed page (column 22 lines 38-40, for example). None of these excerpts of Briffe describe a “graphical user interface that returns a display shown on a display to a pre-existing display, without user input, upon a passage of time,” as recited in each of applicants’ independent claims. The Examiner does not demonstrate how the manual or automatic emergency call-up of a display (as disclosed by Briffe) anticipates applicants’ claimed **return to a pre-existing display, without user input, upon a passage of time**. Indeed, applicants’ claimed invention differs from such disclosure of Briffe in several ways:

(a) the claimed invention **returns** to a pre-existing display, while Briffe **calls up** an emergency display;

(b) the claimed invention returns to a **pre-existing** display, while Briffe calls up a **new** display; and

(c) the claimed invention returns to a pre-existing display, **without user input, upon a passage of time**, while Briffe **requires user input** to return to a pre-existing display.

The Examiner has not shown how, despite these clear differences, the disclosure of Briffe anticipates applicants’ invention as claimed in independent claims 1, 9, 14 and 21. Indeed, Briffe does not anticipate or provide an equivalent teaching to applicants’ invention as claimed in the independent claims, and those claims are therefore allowable. All claims depending from said independent claims are also allowable for at least the same reasons the independent claims are allowable.

C. An open-ended transitional phrase cannot be used to introduce equivalence into an anticipation rejection.

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On page 3 of the Final Rejection of April 9, 2003, The Examiner states:

Furthermore, the present claim language reads “an avionics system comprising: [claim language omitted].” The claim must be interpreted as an avionics system having at least the claimed limitations. Therefore, the claim could include or encompass any equivalent limitations.

In the Response to Arguments section of the same Rejection, the Examiner continues:

“To begin with, since the preamble includes an open-type transition phrase, the claim could include any equivalent limitations. Thus, Briffe discloses the equivalent limitation.”

The Examiner is asserting the disclosure of Briffe, i.e., a return to a pre-existing display after a button is pressed, is an equivalent teaching to applicants’ recited limitation in claims 1, 9, 14 and 21 of “a graphical user interface returns a display shown on said display to a pre-existing display, without user input, upon a passage of time.” However, the use of a transitional phrase such as “comprising” is irrelevant to the question of anticipation. The Examiner asserts that use of the open-ended transitional phrase “comprising” means that applicants’ claims could include any *equivalent* limitations. The Examiner is in error. The transitional phrase “comprising” means applicants’ claims could include **additional or unrecited** limitations. Transitional phrases “define the scope of a claim with respect to what *unrecited additional components or steps, if any, are excluded* from the scope of the claim.” MPEP § 2111.13. Applicants’ use of the transitional phrase “comprising” is consistent with its definition of being inclusive or open-ended and not excluding additional, unrecited elements or method steps. See, e.g., *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) (“Comprising” is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 805 (Fed. Cir.

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1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts"). The choice of transitional phrase (e.g., comprising, consisting, consisting essentially of) is irrelevant to the question of equivalence.

In the present case, applicants' recital of "a graphical user interface that returns a display shown on a display to a pre-existing display, without user input, upon a passage of time" as claimed in claim 1, 9, 14 and 21, is an element not found in Briffe. The Examiner has incorrectly relied on applicants' use of the transitional phrase "comprising" to demonstrate the applicability of an alleged equivalent disclosure in the cited art. The Examiner cannot use a transitional phrase to suggest undisclosed elements that anticipate applicants' claims. Because the Examiner has done precisely that, the anticipation rejection should be withdrawn and the pending claims held allowable.

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CONCLUSION OF ARGUMENTS

Because the Examiner erroneously relied upon applicants' selected transitional phrase to introduce equivalence into an anticipation rejection, and because the Examiner has not shown how Briffe discloses all elements of applicants' claimed invention, the Examiner's final rejection of all of the claims should be reversed.

Respectfully Submitted,

October 3, 2003
Date

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APPENDIX: CLAIMS ON APPEAL

1. An avionics system comprising:

an avionics radio receiver;

a display coupled to said avionics receiver;

an avionics operational system coupled to said display for providing information relating to operation of an aircraft to a pilot; and,

said display having a graphical user interface for generating commands to manipulate said avionics radio receiver in response to a signal generated in response to a positional characteristic of a cursor displayed on said display;

wherein said graphical user interface returns a display shown on said display to a pre-existing display, without user input, upon a passage of time.
2. An avionics system of claim 1 wherein said avionics operational system is a navigation system.
3. An avionics system of claim 1 wherein said display is a multi-functional display disposed in front of a pilot.
4. An avionics system of claim 1 wherein said avionics radio receiver is a communication radio transceiver.

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6. An avionics display of claim 1 wherein said graphical user interface includes a simultaneous display of a COM 1 radio frequency of said avionics radio receiver and a COM 2 radio frequency of said avionics radio receiver.

7. An avionics system of claim 1 wherein said graphical user interface is coupled to a manually-controlled radio control, so that a predetermined manual manipulation of the radio control causes a cursor to move to a predetermined position of said display, wherein said predetermined position of said display provides information having a predetermined relationship with said predetermined manual manipulation of the radio control.

8. An avionics system of claim 1 wherein said graphical user interface provides an expanded view of a predetermined radio function when cursor is manipulated in a predetermined position on said display.

9. An avionics system comprising:

an avionics radio receiver;

a display coupled to said avionics receiver;

said display having a graphical user interface for generating commands to manipulate said avionics radio receiver in response to a signal generated in response to a positional characteristic of a cursor displayed on said display;

wherein said graphical user interface provides an expanded view of a predetermined radio function when the cursor is manipulated in a predetermined position on said display;

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wherein said graphical user interface returns a display shown on said display to a pre-existing display, without user input, upon a passage of time.

10. An avionics system of claim 9 wherein said graphical user interface returns a display shown on said display to a pre-existing display upon a passage of time.

11. An avionics display of claim 9 wherein said graphical user interface includes a simultaneous display of a COM 1 radio frequency of said avionics radio receiver and a COM 2 radio frequency of said avionics radio receiver.

12. An avionics system of claim 9 wherein said graphical user interface is coupled to a radio control, so that a predetermined manual manipulation of the radio control causes a cursor to move to a predetermined position of said display, wherein said predetermined position of said display provides information having a predetermined relationship with said predetermined manual manipulation of the radio control.

14. An avionics system comprising:

means for receiving a radio signal on an aircraft;

means for displaying aircraft operational information to a pilot of the aircraft; and,

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means for graphically coupling said means for receiving and said means for displaying, said means for graphically coupling includes means for graphically manipulating reception of the radio signal;

wherein said means for graphically coupling returns a pre-existing view to said means for displaying upon a passage of time without user input, and wherein said means for displaying simultaneously displays COM1 radio frequency information and COM2 radio frequency information.

17. An avionics system of claim 14, further including means for manually manipulating a control coupled to said means for receiving, wherein said means for graphically coupling is responsive to manipulation of the control coupled to said means for receiving.

18. An avionics system of claim 17 wherein said means for graphically coupling expands a portion of said means for display so as to show additional radio information, in response to manipulating a cursor in a predetermined area of said means for displaying.

21. An avionics system comprising:

an avionics radio receiver;

a display coupled to said avionics receiver;

an avionics operational system coupled to said display for providing information relating to operation of an aircraft to a pilot; and,

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said display having a graphical user interface for generating commands to manipulate said avionics radio receiver in response to a signal generated in response to a positional characteristic of a cursor displayed on said display;

wherein said graphical user interface returns a display shown on said display to a pre-existing display, without user input, upon a passage of time; and

wherein said graphical user interface is coupled to a manually-controlled radio control, so that a predetermined manual manipulation of the radio control causes a cursor to move to a predetermined position of said display, wherein said predetermined position of said display provides information having a predetermined relationship with said predetermined manual manipulation of the radio control.

22. The avionics system of claim 21 wherein said graphical user interface provides an expanded view of a predetermined radio function when the cursor is manipulated in a predetermined position on said display.